

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

COMPOSITE RESOURCES INC.,
Plaintiff/Counter Defendant,
v.
RECON MEDICAL LLC,
Defendant/Counter Claimant.

Case No. 2:17-cv-01755-MMD-VCF

ORDER

This is a patent, trademark, and unfair competition case about tourniquets used to stop the flow of blood to a body part when that body part is severely injured. This order addresses several motions and issues arising out of the last hearing the Court held in this case. (ECF No. 199 (“Hearing”).) The motions this order addresses are Defendant/Counter Claimant Recon Medical LLC’s motion for clarification (ECF No. 206) and Recon’s motion for a pretrial order (ECF No. 208). As further explained below, the Court will grant the motion for clarification in part, grant the motion for a pretrial order, and address several other issues the parties raised in the simultaneous briefs the Court ordered them to file at the Hearing (ECF Nos. 204, 205).¹ This order is also an attempt to course correct this case, where both sides have recently started raising arguments that should be raised in a properly noticed motion—and not on the single issue the Court directed briefing on—in violation of the Court’s orders at the Hearing and more generally not in compliance with the Local Rules.

The Court begins with Recon’s motion for clarification (ECF No. 206) as to the finding the Court made at the Hearing on Recon’s argument that Plaintiff/Counter

¹This order does not address the pending motions in limine. (ECF Nos. 201, 202.)

1 Defendant Composite Resources Inc. (“CRI”) violated LPR 1-6. The Court grants the
2 motion in part to reiterate that CRI may proceed to trial on its claim that Recon’s “Gen 4”
3 tourniquet infringes CRI’s asserted patent claims. The motion is otherwise denied, as the
4 Court was quite clear at the Hearing—that while Plaintiff may have technically violated
5 LPR 1-6 by failing to amend its infringement contention to include the “Gen 4” tourniquet,
6 no prejudice has resulted. If Recon seeks additional clarification about the Court’s findings
7 on the record at the Hearing, Recon may obtain a transcript of the Hearing. (ECF No. 199.)

8 The Court next reiterates that, at the Hearing, it directed supplemental briefing on
9 the issue of whether this case should proceed to a bench or jury trial only. (ECF No. 199.)
10 Despite the Court’s order, both sides raised issues outside of that scope in their
11 supplemental briefs on the bench or jury trial issue. Specifically, CRI suggests that it
12 should proceed to trial for injunctive relief on its trademark and unfair competition claims
13 in addition to its patent infringement claims. (ECF No. 205 at 2.) For its part, Recon argues
14 the Court should dismiss this case on the eve of trial because CRI is violating the anti-
15 claim-splitting doctrine. (ECF No. 204 at 1-3.) CRI’s suggestion and Recon’s argument are
16 outside the scope of what the Court ordered them to brief and therefore improper. But the
17 Court will nonetheless briefly address these two issues before turning to the question of
18 whether this will be a jury or bench trial.

19 As Recon argues in its motion for a pretrial order (ECF No. 208), CRI’s request to
20 proceed to trial for injunctive relief on its trademark and unfair competition claims violates
21 the Bankruptcy Court’s stay order (*id.* at 3). Moreover, CRI’s request does not align with
22 the Court’s understanding from the Hearing that CRI is only proceeding to trial for
23 injunctive relief on its patent infringement claims, and as noted, is outside the scope of
24 what the Court ordered CRI to brief at the Hearing. The Court grants Recon’s motion for
25 a pretrial order (*id.*) to the extent necessary to make it clear that CRI may proceed to trial
26 for injunctive relief on its patent infringement claims only. CRI may not proceed to trial for
27
28

1 injunctive relief on its trademark and unfair competition claims unless and until the
2 Bankruptcy Court alters or lifts its stay order.

3 The Court similarly reiterates that Recon's argument that CRI's current approach
4 to this case violates the anti-claim-splitting doctrine is outside the scope of the issue the
5 Court ordered Recon to brief at the Hearing. However, because the issue is potentially
6 case-dispositive, the Court grants Recon leave to file a proper motion subject to the
7 briefing schedule described below if Recon wishes.

8 Turning to the bench or jury trial issue, CRI argues this case should proceed to a
9 bench trial because the accused infringer has no right to a jury trial if the patentee, like
10 CRI here—having dismissed its monetary damages claims in this case—seeks only
11 equitable relief. (ECF No. 205 at 2-5.) Recon counters that this case should proceed to a
12 jury trial because CRI is still seeking monetary damages, albeit before the Bankruptcy
13 Court. (ECF No. 204 at 4-5.) The Court agrees with Recon.

14 This dispute presents a close call on an open question of law that the Court will—
15 and should—resolve by siding with Recon. *See Granite Rock Co. v. Int'l Bhd. of*
16 *Teamsters, Freight, Constr., Gen. Drivers, Warehousemen & Helpers, Loc. 287 (AFL-*
17 *CIO)*, 649 F.3d 1067, 1069 (9th Cir. 2011) ("In close cases, a court should err on the side
18 of preserving the right to a jury trial.") (affirming the district court's decision to deny a
19 motion to strike a jury demand) (citation omitted). On the one hand, CRI has dismissed its
20 monetary damages claims in this case. (ECF No. 203.) On the other, that dismissal is
21 without prejudice (*id.*), and there is also no dispute that CRI continues to assert monetary
22 damages claims for patent infringement in the proceedings before the Bankruptcy Court
23 (ECF Nos. 204 at 4-5, 205 at 2 n.1).

24 But for CRI's simultaneous pursuit of monetary damages in the bankruptcy
25 proceedings, *In re Tech. Licensing Corp.*, 423 F.3d 1286, 1290-91 (Fed. Cir. 2005) would
26 sanction CRI's request to proceed to a bench trial. *See id.* ("Thus, if the patentee seeks
27 only equitable relief, the accused infringer has no right to a jury trial, regardless of whether
28

1 the accused infringer asserts invalidity as a defense (as in the *Tega*/case) or as a separate
2 claim (as in this case).”). However, there is no dispute that CRI is not only pursuing
3 equitable relief—as noted, CRI is pursuing monetary damages on the same patent
4 infringement claims it asserts here in the bankruptcy proceedings. (ECF Nos. 204 at 4-5,
5 205 at 2 n.1.) That renders *In re Tech. Licensing Corp.* distinguishable, where the Federal
6 Circuit Court of Appeals did not mention any simultaneous bankruptcy proceedings. See
7 *generally* 423 F.3d 1286. The Court could take a narrow view of *In re Tech. Licensing*
8 *Corp.* and ignore the proceedings before the Bankruptcy Court, but that would violate the
9 rule mentioned above that, in close cases, the Court should preserve the right to jury trial.
10 Moreover, the Court does not wish to invite mandamus proceedings by declaring that this
11 case will be a bench trial, see *id.* at 1288 (“the right to grant mandamus to require jury trial
12 where it has been improperly denied is settled”) (citation omitted), and the Court expected
13 this case to proceed to a jury trial all along in any event, particularly considering that
14 whether patent infringement occurred is normally a fact question for the jury, see *Markman*
15 *v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996). In sum, the Court will hold a jury
16 trial unless Recon decides to file a proper motion to dismiss for violation of the anti-claim-
17 splitting doctrine, and the Court grants it.

18 It is therefore ordered that Recon’s motion for clarification (ECF No. 206) is granted
19 in part as specified herein.

20 It is further ordered that Recon’s motion for a pretrial order (ECF No. 208) is granted
21 as specified herein.

22 It is further ordered that, if Recon wishes to file a motion to dismiss this case for
23 violation of the anti-claim-splitting doctrine, it must file that motion by October 25, 2021.
24 Any response to that motion is due November 2, 2021. Any reply is due November 4,
25 2021.

26 ///

27 ///

28

1 It is further ordered that, if Recon does not timely file a motion to dismiss for violation
2 of the anti-claim-splitting doctrine as specified herein, the Court will deem that argument
3 abandoned.

4 It is further ordered that, unless the Court later decides to dismiss this case for
5 violation of the anti-claim-splitting doctrine, this case will proceed to a jury trial in Reno,
6 Nevada, on CRI's claim for injunctive relief on its patent infringement claims only.

7 DATED THIS 22nd Day of October 2021.

8 

9
10 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE